

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM J. MABIE,)
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Movant,)
)
)
vs.) Case No. 4:12CV00571 ERW
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)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before me on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [ECF No. 1], movant's amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [ECF No. 5], and respondent's motion to dismiss [ECF No. 3].

Movant seeks relief from the conviction and sentence in *United States v. Mabie*, No. 4:09 CR 351 ERW (E.D. Mo. 2009), which was affirmed on direct appeal by the Court of Appeals for the Eighth Circuit. *See United States v. Mabie*, 663 F.3d 322 (8th Cir. 2011). However, movant filed a timely petition for certiorari in the Supreme Court, and the Supreme Court has called for a response, which is currently due on June 11, 2012. Consequently, movant's direct appeal is still pending. *See United States v. Mabie*, No. 11-9770 (U.S. April 6, 2012).

Because the direct appeal is pending, movant's § 2255 motion has been

prematurely filed. *See Masters v. Eide*, 353 F.2d 517, 518 (8th Cir. 1965) (per curiam) (“[o]rdinarily resort cannot be had to 28 U.S.C.A. § 2255 or habeas corpus while an appeal from conviction is pending”). The Court finds no extraordinary circumstances that would allow movant to file his motion at this time. As a result, the Court will dismiss this action without prejudice to refiling after the criminal judgment becomes final.

Accordingly,

IT IS HEREBY ORDERED that respondent’s motion to dismiss [ECF No. 3] is **GRANTED**.

IT IS FURTHER ORDERED that movant’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [ECF No. 1] and amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [ECF No. 5] are **DISMISSED** without prejudice.

An Order of Dismissal will accompany this Order.

So Ordered this 5th day of June, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE